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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/803,339	03/09/2001	Richard A. Wiltshire	122923-1000	7334

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EXAMINER	
MOSSER, ROBERT E	

ART UNIT	PAPER NUMBER
3714	

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

YW

Office Action Summary	Application No.	Applicant(s)	
	09/803,339	WILTSHIRE ET AL.	
	Examiner	Art Unit	
	Robert Mosser	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 June 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24,29-31 and 45-48* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24,29-31 and 45-48* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *6-18-2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

♦

Claims 1-24, 29-31 and 45-48 are pending.

This action is final.

In response to amendment dated June 18th 2004.

♦

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **1-24, 29-31,** and **45-48** are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior in art.

"....merely using a computer to automate a known process does not by itself impart nonobviousness to the invention. See Dann v. Johnston, 425 U.S. 219, 227-30,

189 USPQ 257, 261 (1976); In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958)." (MPEP 2106. VI)

The applicant's background of invention found on pages 1 through 4 of the specification as originally filed describe a well known technique in lottery gaming commonly referred to as lottery pools, lottery syndicates, and/or lottery clubs. These lottery organizations form around the concept of pooling resources together to make a common purchase of lottery tickets to increase the chance of winning a lottery. While the trade off for the player is that he/she will only receive a share of the winnings in the case that any of the tickets located in the pool are winning tickets. In order to ensure some degree of responsibility in the process the number selected for the purchased tickets are usually distributed in photocopies (other methods including numbered lists and set ticket number ranges are also well known equivalents to this procedure).

In the same section of the specification the applicant also teaches the use of the World Wide Web for the communication of lottery related information to lottery players.

As presently understood the claimed system of claims **1-24, 29-31,** and **45-48** is previously known gambling device wherein the improvement is the use of a computer and network for the purposes of automation. These features as set forth are viewed as being equivalent to their traditional non-electronic based forms as well as being obvious in view the teachings of the applicant's admitted prior art when considered in it's totality (see MPEP and incorporated case citations above).

The utilization of the internet for the communication lottery related information is taught by the applicant on page three of the specification as originally filed and related features are present in claims 1-**24, 29-31**, and **45-48**.

The utilization of record keeping for lottery related information including information regarding participants, respective participant contributions, participant number preferences, as well as ticket number data, and comparison features are considered either inherent to the functionality of a lottery organization of players and/or taught by the applicants disclosure on pages one through four.

The establishment of agreed rules, acquisition of winning lottery numbers, their comparison against numbers on tickets purchased and notification to the participants regarding the status of that comparison and any possible winning shares present is considered inherent to the functionality of a lottery organization.

The ability of participants in the organization to start new pools based on current jackpot amounts and limit the size of the pools as found in at least claims **2, 4,** and **31** is consider to be an inherent function of the lottery organization concept wherein the creation and dissolution of pools is necessitated based upon particpant demand and interest.

Regarding the notification features of claims **17, 19,** and **21,** though notification as mentioned above is an inherent feature of a lottery group the applicant's disclosure is silent regarding the exact manner taught by the respective claims including e-mail, the variance of color scheme, and highlighting. However it would have been obvious to one of ordinary skill in the art at the time of invention to have utilized the use of graphics

and/or email in the notification manner above in order to incorporate notification methods readily available in an internet environment.

Response to Arguments

Applicant's arguments with respect to claim **1-24, 29-31,** and **45-48** have been considered but are moot in view of the new ground(s) of rejection.

The previously applied art has been removed in order to more accurately address the thrust of the instant invention.

It is unclear presently however in view of the applicant's disclosure of admitted prior art, well known previous lottery pools (clubs, syndicates, organizations), their respective techniques, and the automation citations above and as taught by the applicant where applicant has provided for a clear separation between the prior art and the claimed invention.

The examiner hopes that the applicant will find the newly applied rejections to be better fitted to their presently claimed invention and extends his gratitude for applicant's expressed appreciation on the first page of the remarks dated June 18th, 2004 as well as their patience in our discussion on May 7th, 2004.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (703)-305-4253. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

REM

JESSICA HARRISON
PRIMARY EXAMINER